FARAD CONTINUATION SHEET

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 960 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr. M.R. Suryvanshi, advocate for Appellants.

CORAM: A.S. OKA, J.
DATE : 24th August, 2004.

P.C.:-

1. The Second Appeal is filed by the Original Plaintiff. The Appellant filed a suit for injunction against the Respondent Municipal Corporation for challenging the threatened action of demolition of the suit structure. The case of the Appellant is that when she applied for permission to carry our repairs to the Respondent Corporation she was told by the officers of the Respondent Corporation that permission for carrying out repairs is not required. The courts below have dismissed the suit

filed by the Appellant by holding that the Appellant has carried out illegal construction without obtaining permission of the competent authority.

2. Mr. Suryavanshi, learned counsel holding for the Appellants submitted that the Respondent Corporation did not file Written Statement and therefore the averments made in the plaint shall be deemed to have been admitted by the Respondent Corporation. Reliance was placed on the provisions of Order 8 Rule 5 and Order 8 Rule 10 of the Code of Civil Procedure, 1908.

3. I have considered the submissions made by the learned counsel for the Appellants. Merely because Written Statement was not filed by the Defendants, it is not necessary in every case for the Trial Court to take recourse to the aforesaid provisions of the said code and to pass a decree. The court has discretion to call upon the Plaintiff to prove his case made out in the Plaint. In the present case, it is obvious that the Trial Court called upon the Appellant to prove

her case and therefore the Appellant stepped into the witness box. The Appellate Court has referred to the oral evidence of the Appellant in which she admitted that the tin shade admeasuring 28 ft x 7 ft x 8 ft has been constructed by her with the help of iron angles. The Appellate Court has held that from the evidence of the Appellant it is clear that the original suit structure was constructed by using mud and stones and now the Appellant has repaired the suit structure admeasuring 15 ft x 11 ft x 10 ft by using bricks, stones and cement. The Appellate Court therefore found that the action of the Respondent of issuing notice to the Appellant was legal and valid.

4. In view of the evidence laid by the Appellant herself the Courts below have come to the conclusion that the construction carried out by the Appellant does not amount to mere carrying out repairs but it is reconstruction made by using bricks, stones and cement and moreover a tin shade has also been erected without permission.

5. In view of the evidence recorded by the Courts below, no substantial question of law arises. Second Appeal is dismissed with no orders as to costs.

6. The dismissal of the Second Appeal will not prevent the Appellant from making an application to the Respondent for regularisation of the suit structure. The Respondent Corporation shall not demolish the said structure for a period of eight weeks from today. An application for regularisation, if made by the Appellant will be considered on its own merits and in accordance with law. It is made clear that for a period of eight weeks from today the Appellant will maintain Status-Quo in respect of the suit structure in all respects.

. All concerned to act on a copy of this order duly authenticated by the Court Sheristedar/office.

JUDGE